

March 27, 2005

Richard H. Mathews
Associate Deputy Administrator
National Organic Program
USDA– AMS–TMP–NOP
1400 Independence Ave., SW.
Room 4008 South., Ag Stop 0268
Washington, DC 20250–0268

Dear Mr. Mathews:

Thank you for the opportunity to comment on the NOP's Proposed Rule for the Development, Issuance, and Use of Guidance Documents (TM–03–03) on behalf of the Northeast Organic Farming Association Interstate Council.

Our federation of seven autonomous chapters would like to go on record in support of the comments on the Guidance Documents issued by the NOSB on March 25, 2005. NOFA agrees that it is important to establish standardized procedures for developing guidance documents with information on NOP procedures and policies. We are aware of several cases of uneven application of NOP policies which undermine one of the purposes of the NOP which is to provide uniform organic standards throughout the country. But in setting standardized procedures, we believe it is essential to include the possibility of input from the organic public by consulting at every step with the NOSB.

The NOSB was established by the Organic Foods Production Act of 1990 to advise the Secretary on implementation of the Act [6518(a)]. OFPA 6518(k)(1) further states, "The Board shall provide recommendations to the Secretary regarding the implementation of this chapter." In order to institutionalize publicly-supported collaboration between the NOP and NOSB, TM-03-03 should be amended by adding the "General Procedures for Formal Collaboration" to Section E. *Procedures for Developing Guidance Documents*.

NOFA particularly supports the NOSB's specific comments number 3., which stresses the importance of public participation, number 6., which calls for the recognition of the many NOSB recommendations that the NOP has yet to acknowledge, and number 11., which calls for the NOP to educate new NOSB appointees, certifying agents and the general public as to the legal effect of guidance documents:

3.
Section IV.E.1. *Development of Level 1 Guidance Documents* – The text in paragraph 1 currently states, "For Level 1 guidance documents, the program will solicit public input prior to implementation, unless: (1) There are significant regulatory justifications for immediate implementation; (2) there is a new statutory requirement, executive order, or court order that requires immediate implementation, and guidance is needed to help effect such implementation; or (3) the guidance presents a less burdensome policy that is consistent with the purposes of the Act and implementing regulations. In the latter situation, the program will solicit public input upon issuance/implementation."

The NOSB finds that the above language introduces numerous instances whereby guidance documents may be issued with no opportunity for public input in the development and revision of the documents. The policy above establishes no criteria or procedures for making

determinations on when or whether public input will be solicited. Terms such as “significant” and “less burdensome” are not defined. In addition, the three categories introduced above constitute subdivisions of Level 1. Each should be further defined, with criteria and procedures, and examples given of each, if the text is to be retained.

The NOSB suggests that subdivisions (1) and (3) be deleted, and that guidance documents in those categories be subjected to review by the NOSB and members of the public. Item (3) in effect permits a relaxation of standards without opportunity for public comment, which could be detrimental to the industry, if consumers perceived a loss in integrity of the label claim. The NOSB supports allowance for expedited guidance as described in subdivision (2).

6.
Section IV.E.5 *Guidance Document Agenda* - The NOSB suggests that the first sentence be amended to read, “The NOP will update all existing policy statements, NOSB final recommendations, and Q and A’s to the guidance format using the standard elements listed in this notice and post these for public comment as soon as possible.”

Rationale: The NOSB has submitted numerous recommendations for guidance to the USDA. The NOSB recommendations have been subjected to transparent and inclusive public comments, and have been amended to reflect public comments prior to adoption. The NOP should prioritize the use of existing NOSB recommendations as a basis for the development of guidance documents. The NOSB further supports the timely issuance of draft guidance documents.

11.
Section IV.G.1. *Education* – The NOSB strongly supports the need for education of NOP employees and members of the public. Since accredited certifying agents are charged under OPFA and the regulation with assessing compliance and issuing certification, the NOSB suggests that the second paragraph be amended to read, “The program also will educate new NOSB members, certifying agents and the public about the legal effect of guidance. These GGP’s and the statement of the nonbinding effect of guidance that will be included in every future guidance document and on the comprehensive list of guidance documents will help to educate certifying agents and the public about the legal effect of guidance. The NOP staff will take the opportunity to state and explain the legal effect of guidance when speaking to certifying agents and the public about guidance documents.”

In conclusion, NOFA would like to thank the NOP for issuing draft TM-03-03 and for soliciting public comments.

Yours truly,

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